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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA
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9 DERRICK HARRINGTON,)
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11 Plaintiff,)
12 vs.)
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14 A.K. SCRIBNER, et al.,)
15 Defendants.)
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No. CV-F-05-624 OWW/GSA PC
ORDER DENYING PLAINTIFF'S
REQUEST FOR RECONSIDERATION
(Docs. 61 & 62)

By Order filed on March 30, 2009, the United States
Magistrate Judge denied Plaintiff's motion for appointment of
counsel.

On April 10, 2009, Plaintiff timely filed a Request for
Reconsideration by District Court of Magistrate Judge's ruling.

Pursuant to Rule 72-303, Local Rules of Practice, a District
Judge upholds a Magistrate Judge's ruling on a referred matter
unless it is "clearly erroneous or contrary to law." See Rule
72(a), Federal Rules of Civil Procedure; 28 U.S.C. §
636(b) (1) (A). The "clearly erroneous" standard applies to a

1 Magistrate Judge's findings of fact. *Concrete Pipe & Prods. v.*
2 *Constr. Laborers Pension Trust*, 508 U.S. 602, 623 (1993). "A
3 findings is 'clearly erroneous' when although there is evidence
4 to support it, the reviewing [body] on the entire evidence is
5 left with the definite and firm conviction that a mistake has
6 been committed." *Id.* at 622. The "contrary to law" standard
7 allows independent, plenary review of purely legal determinations
8 by the Magistrate Judge. *FDIC v. Fidelity & Deposit Co. of Md.*,
9 196 F.R.D. 375, 378 (S.D.Cal.2000); *Haines v. Liggett Group,*
10 *Inc.*, 975 F.2d 81, 91 (3rd Cir.1992). "An order is contrary to
11 law when it fails to apply or misapplies relevant statutes, case
12 law, or rules of procedure." *DeFazio v. Wallis*, 459 F.Supp.2d
13 159, 163 (E.D.N.Y.2006).

14 Plaintiff's request for reconsideration is DENIED.

15 Plaintiff makes no showing that the Magistrate Judge
16 utilized an incorrect legal standard or otherwise abused his
17 discretion. As the Magistrate Judge concluded, Plaintiff's case
18 is not exceptional. Plaintiff's claim that his head injury makes
19 it difficult for him to prosecute this action is belied by the
20 number of motions filed by Plaintiff in this action since his
21 injury. Plaintiff's claim that prison officials are delaying the
22 delivery of legal mail and restricting his access to the prison
23 law library was not raised to the Magistrate Judge. Nonetheless,
24 if any such restrictions result in Plaintiff be unable to timely
25 comply with Court schedules, Plaintiff may request an extension
26 of time or relief from those schedules.

1 IT IS SO ORDERED.

2 **Dated:** April 16, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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